



**Minutes of the Government Records Council
May 18, 2021 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 p.m. by Ms. Robin Berg Tabakin via Microsoft Teams.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. Berg Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on May 13, 2021.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Salma Chand, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), Gina Trish (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member.

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Berg Tabakin called for a motion to amend the agenda to move GRC Complaint No. 2019-208 from Section VI(B) to VI(A) based on a recusal and to move GRC Complaint No. 2020-42 from VI(B) to V(C) based on a withdrawal. Ms. Chand made a motion, which was seconded by Ms. Trish.

II. Executive Director's Report:

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,695 Denial of Access Complaints. That averages about 304 annual complaints per 18 3/4 program years. So far in the current program year (FY2021), the GRC has received 224 Denial of Access Complaints.

- 329 of the 5,695 complaints remain open and active (5.7%). Of those open cases:
 - 3 complaint is on appeal with the Appellate Division (0.9%);
 - 21 complaints are currently in mediation (6.4%);
 - 6 complaint are proposed for the Office of Administrative Law (1.8%);
 - 29 complaints await adjudication by the Office of Administrative Law (8.8%);
 - 87 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (26.4%);
 - 183 complaints are work in progress (55.6%); and
 - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 33,946 total inquiries, averaging about 1,912 annual inquiries per 17 3/4 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2021), the GRC has received 1,558 inquiries (7.1 inquiries per workday).

III. Closed Session: None

IV. Approval of Minutes of Previous Meetings:

April 27, 2021 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the April 27, 2021 meeting. Ms. Trish made a motion, which was seconded by Ms. Chand. The motion passed by a unanimous vote; Mr. Ritardi abstained.

April 27, 2021 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft Closed session minutes of the April 27, 2021 meeting. Ms. Trish made a motion, which was seconded by Ms. Chand. The motion passed by a unanimous vote; Mr. Ritardi abstained.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The reason for the Administrative Disposition is under each complaint below:

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

Ms. Berg Tabakin noted that Ms. Chand would be muted for item No. 1 to ensure her non-participation in the item from which she was recused. Ms. Berg Tabakin confirmed to the public that Ms. Chand was muted prior to addressing the below agenda item.

1. **Huafang Cui v. NJ Department of Education (2021-83) (SC Recusal)**

- No Correspondence Received by the Custodian.
- Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote; Ms. Chand recused.

Ms. Berg Tabakin notified the public that Ms. Chand would rejoin the meeting by unmuting herself. Ms. Chand rejoined the meeting at that time.

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None

C. Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):

1. **David Jarashow, Esq. (o/b/o Dontae Hathaway) v. NJ Department of Corrections (2020-42)**

- Complaint Voluntarily Withdrawn.

2. **David Weiner v. County of Essex (2020-195)**

- Complaint Settled in Mediation.

3. **David Weiner v. County of Essex (2020-224)**

- Complaint Settled in Mediation.

4. **Kelvyn Anderson v. Camden County Police Department (2020-237)**

- Complaint Settled in Mediation.

5. **Rory Moore v. Township of Nutley (Essex) (2021-78)**

- Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda item Nos. 1 through 5 to ensure his non-participation in those items from which he was recused. Ms. Berg

Tabakin confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

A brief summary of the Executive Director's recommended action is under each complaint:

1. **Stephen Bialkowski v. Parking Authority of the City of Newark (Essex) (2019-198) (SR Recusal)**

- The subject OPRA requests are invalid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). However, because the Custodian located numerous records and offered disclosure contingent on payment of an agreed-upon fee, he unlawfully denied access to the responsive records and must disclose them. Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Juan Mendoza v. City of Jersey City (Hudson) (2019-208) (SR Recusal)**

- This complaint shall be dismissed because it is unripe for adjudication. Specifically, the Complainant filed the complaint during an extension of time. Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **Seth I. Davenport, Esq. v. Township of Irvington (Essex) (2020-33) (SR Recusal)**

- This complaint should be dismissed because the Complainant's next-of-kin withdrew same.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

4. **Erv-Wikine Pryor v. Essex County Prosecutor's Office (2020-63) (SR Recusal)**

- Portions of the Complainant's request item Nos. 3, 4, and 5 were invalid because they failed to include necessary criteria and sought generic records or

data. Elcavage, GRC 2009-07; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).

- The Custodian unlawfully denied access to the arrest reports and warrants sought in OPRA request item Nos. 1 and 5. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). Thus, the Custodian must search for and disclose those records located or certify if none exist.
- The Custodian lawfully denied access to the balance of the Complainant's OPRA request under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

5. **Stacie Percella v. City of Bayonne (Hudson) (2020-73) (SR Recusal)**

- Ms. LaGatta's response was insufficient because although she timely sought an extension, she failed to provide a date certain on which she or the Custodian would respond. N.J.S.A. 47:1A-5(i).
- The Custodian unlawfully denied access to two (2) of the responsive agreements. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to two (2) other agreements because they were not executed at the time of the Complainant's OPRA request. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018). Further, the Custodian borne her burden of proof that she lawfully denied access to another agreement because none existed. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Ms. Berg Tabakin notified the public that Mr. Ritardi would rejoin the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

1. Luis F. Rodriguez v. Kean University (2015-290)

- This complaint should be dismissed because Complainant's Counsel failed to submit a fee application within the prescribed time frame. N.J.A.C. 5:105-2.13(b).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Freehold Township Police Department (Monmouth) (2018-155)

- This complaint should be dismissed because the Complainant withdrew it on December 23, 2020.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

3. Adam C. Miller v. Township of Howell (Monmouth) (2018-303)

- The GRC cannot determine who violated N.J.S.A. 47:1A-5(h). Barkley v. N.J. Dep't of Treasury, GRC Complaint No. 2009-128 (May 2010).
- The Complainant's request item Nos. 1, 9, 12, 17 through 20, 21 through 23, 26 through 28, 30 through 44, 46, and 47 are invalid because they fail to identify specific records or seek information. MAG, 375 N.J. Super. 534; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Miller v. Twp. of Howell (Monmouth), GRC Complaint No. 2018-236, *et seq.* (May 2020).
- The Complainant's OPRA request item Nos. 2 through 8, 10, 11, 13 through 16, 24, 25, 29, and 45 are valid. Thus, the Custodian shall perform a search for responsive records, disclose those that exist, provide a specific lawful basis for those records exempt from disclosure, or certify if none exist.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

4. D. Scott Carew v. Township of Willingboro (Burlington) (2019-151)

- The Custodian's failure to timely respond to the Complainant's June 21, 2019 OPRA request within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's

failure to timely respond to the Complainant's June 25, 2019 OPRA request resulted in a "deemed" denial of access. However, the GRC declines to order any further action on the June 25, 2019 OPRA request because the Custodian responded on January 13, 2020.

- The Custodian's response to the Complainant's June 21, 2019 OPRA request was insufficient because she failed to provide a specific lawful basis for denying access to multiple e-mail attachments. N.J.S.A. 47:1A-5(g).
- The Complainant's June 21, 2019 request item Nos. 2 and 3 are invalid because they sought generic "documents." MAG, 375 N.J. Super. 534.
- The Complainant's June 21, 2019 OPRA request item No. 3 and June 25, 2019 OPRA request item No. 1 are valid because the Custodian located and disclosed responsive records. Burke, 429 N.J. Super. 169. However, the GRC declines to order disclosure because the Custodian did so on July 12, 2019 and January 13, 2020.
- The Custodian lawfully denied access to the "list of scenarios" and interview letter because they were exempt as "inter-agency or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1. The Custodian also lawfully denied access to Ms. Rogers' references and presentation materials. Executive Order No. 26 (Gov. McGreevey, 2002).
- The Custodian lawfully denied access to application materials attached to the January 13, and 14, 2017 e-mails because they were not responsive to the subject OPRA request.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

5. **Brian Kubiak v. Toms River District No. 1 Board of Fire Commissioners (Ocean) (2019-163)**

- Mr. Sipe failed to comply with the Council's March 30, 2021 Interim Order.
- The Council's Orders are enforceable in Superior Court.
- Mr. Sipe may have knowingly and willfully violated OPRA. N.J.S.A. 47:1A-11. Thus, this complaint shall be referred to the Office of Administrative Law for a hearing to determine whether such a violation occurred, as well as to determine the prevailing party fee issue.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

6. **James McGinnis v. Evesham Township School District (Burlington) (2019-236)**

- The Custodian complied with the Council's March 30, 2021 Interim Order.
- There is no knowing and willful violation.

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Chester (Morris) (2019-250)**
- The Custodian unlawfully denied access to the requested records based on a shared services agreement. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); and Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). However, the GRC declines to order disclosure because the Complainant received the responsive records on December 17, 2019.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
8. **Michael Camacho v. NJ Department of Corrections (2020-6)**
- The Custodian complied with the Council's April 27, 2021 Interim Order.
 - There is no knowing and willful violation.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Town of Westfield (Union) (2020-11)**
- The Custodian lawfully denied access to the Complainant's December 26, 2019 OPRA request item No. 1 because no records existed. Pusterhofer, GRC 2005-49.
 - The proposed special service charge is warranted, but not reasonable. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). Thus, the total recalculated charge that the Complainant must pay for disclosure is \$826.33.
 - The knowing and willful and prevailing party analyses are deferred.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)**

- The Custodian's response to OPRA request item Nos. 3 through 6 was insufficient because she failed to attempt to reach a reasonable accommodation prior to relying on the "substantial disruption" exemption. N.J.S.A. 47:1A-6; Herron v. Twp. of Montclair (Essex), GRC Complaint No. 2008-46 (April 2009). The Custodian shall thus locate and disclose the responsive records, inclusive of a special service charge if applicable.
- The Custodian lawfully denied access to OPRA request Nos. 1 and 2 because no responsive records exist. Pusterhofer, GRC 2005-49.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

11. **David Scott Carew v. Kean University (2020-41)**

- The Custodian did not bear her burden of proof that the "Glomar" response was applicable to the records sought in this complaint. N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182 (App. Div. 2016).
- The requested records, to the extent they exist, are exempt from disclosure under OPRA. N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

12. **Luis F. Rodriguez v. Kean University (2020-65)**

- The Custodian's response was sufficient and thus no violation of OPRA occurred. N.J.S.A. 47:1A-5(g); Halliwell and Pennant v. Borough of Brooklawn (Camden), GRC Complaint No. 2016-210 (Interim Order dated August 28, 2018).
- The Custodian lawfully denied access to the requested e-mails regarding an attorney ethics grievance. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Yannone v. N.J. Dep't of Corr., GRC Complaint No. 2016-73 (October 2017).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Norwood (Bergen) (2020-83)**
- Mr. Buginsky's response was insufficient because he failed to respond to each individual request item. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-272.
 - Mr. Buginsky lawfully denied access to OPRA request item Nos. 2 through 4 because no records exist. Pusterhofer, GRC 2005-49; Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020).
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
14. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of New Brunswick (Middlesex) (2020-111)**
- The Custodian lawfully denied access to OPRA request item Nos. 1 through 3 because no records exist. Pusterhofer, GRC 2005-49; Simmons, 464 N.J. Super. 77.
 - The Custodian lawfully denied access to OPRA request item No. 4 because the records sought were exempt from disclosure pursuant to Attorney General Law Enforcement Directive No. 2018-3. Further, to the extent they exist, the records were exempt from disclosure under the personnel exemption. N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004).
 - The Complainant is not a prevailing party.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
15. **Huafang Cui v. NJ Department of Labor & Workforce Development (2021-82)**
- The Custodian violated the GRC's regulations by failing to submit a Statement of Information. N.J.A.C. 5:105-2.4(a).
 - This complaint should be dismissed as without a reasonable factual basis because the Complainant provided no evidence that he submitted an OPRA request to the N.J. Dep't of Labor and Workforce Development. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-7(e).
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal: None

VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

X. Public Comment:

- Mr. Michael Camacho (GRC Complaint No. 2020-6): Mr. Camacho provided some background on the issues that precipitated the OPRA request at issue in GRC 2020-6.
- Mr. Huafang Cui (GRC Complaint No. 2021-82): Mr. Cui asked a question about his case. Mr. Caruso suggested that Mr. Cui contact his case manager directly if he had a question about his case.

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Ms. Chand made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

The meeting adjourned at 2:10 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 29, 2021